submitted by counsel for the appellant that the respondent and the appellant, together with the solicitor who handled the sale and purchase, were parties to a conspiracy to deceive the Urban Renewal Authority and Credit POSB into the belief that the mortgage loan of $93,000 was being made to the appellant to enable her to purchase the property for herself beneficially. Counsel for the appellant relied on the fourth proposition enunciated by Devlin J. (as he then was) in *Edler* v. *Auerbach*[6] which was in the following terms:

"...fourthly, ...where the Court is satisfied that all the relevant facts are before it and it can see clearly from them that the contract had an illegal object, it may not enforce the contract, whether the facts were pleaded or not."

In our view the respondent's account of the matter in dispute did not necessarily involve proof that he had intended to deceive the Urban Renewal Authority and Credit POSB into granting a loan and that by reason of such deception they had granted a loan which they would not have otherwise granted. We are not at all sure on the evidence that the Urban Renewal Authority, like any other employer, would not have accommodated the appellant and accepted a legal mortgage from her in spite of their private agreement as to the beneficial ownership. The matter was simply not investigated. In fact, there was some evidence that an officer of the Urban Renewal Authority was told of the purpose of the transaction. Again this was not investigated and was understandably left at large since the allegation of illegality was never pleaded. Further, in this case the idea originally put forward by the appellant was to seek a loan in their joint names which was a proposal which might reasonably have been accepted by the Urban Renewal Authority. Thereafter both the appellant and the respondent acted throughout on the advice of their solicitor. In these circumstances, we are quite unable to say that the respondent had founded his cause of action upon an immoral or an illegal act and that we must deny him our aid and process.

Accordingly, we dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Chung & Co.; Shook Lin & Bok.*

WONG HONG TOY & ANOR. v. PUBLIC PROSECUTOR

[C.C.A. (Lai Kew Chai, Punch Coomaraswamy & Chua JJ.) April 14, 1986]

[Singapore – Criminal Appeal No. 10 of 1985]

Criminal Law and Procedure – Transfer of case from Subordinate Court to High Court – Grounds for – Whether political personalities should be treated differently – Criminal Procedure Code (Cap. 113), s. 184(1).

This was an appeal against the decision of the High Court dismissing an application for the transfer of the trial of a case from the Subordinate Court to the High Court ([1986] 2 M.L.J. 8). The High Court had earlier ordered the appellants to be tried before a different District Judge for having knowingly made a false statement in a declaration which was by law receivable as evidence and punishable under section 199 read with section 193 of the Penal Code (see [1986] 1 M.L.J. 133).

Held: (1) in this case it has not been made to appear to the Court that a fair and impartial trial could not be had in the District Court;

(2) there was no question of law of unusual difficulty arising in this case;

(3) all accused persons must be treated equally regardless of status. The court cannot accept the proposition that accused persons who are political personalities should be treated differently if they apply to transfer their trials to the High Court.

Cases referred to:

(1) *Attorney-General* v. *Koh Cho Puan & Ors.* See Appendix at page 339.

(2) *Fung Yin Ching & Ors.* v. *Public Prosecutor* [1965] 1 M.L.J. 49.

COURT OF CRIMINAL APPEAL.

J.B. Jeyaretnam for the appellants.

Tan Teow Yeow (Dy. Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court) : By an order made by the learned Chief Justice the appellants were ordered to be re-tried before another District Judge for having knowingly made a false statement in a declaration which was by law receivable as evidence and punishable under section 199 read with section 193 of the Penal Code. Under section 184 of the Criminal Procedure Code they applied to the High Court for an order that the trial be transferred from the Subordinate Court to the High Court. At the conclusion of the

hearing of the criminal motion the High Court dismissed the application. Against that decision this appeal was brought before us.

The power of the High Court to transfer cases from any subordinate court for trial before the High Court is set out in section 184 under Chapter XX of the Criminal Procedure Code. So far as it is relevant for the purposes of this appeal, the relevant provisions are as follows:

"184. – (1) Whenever it is made to appear to the High Court that –

(a) a fair and impartial inquiry ... trial cannot be had in any criminal court subordinate to it;

(b) some question of law of unusual difficulty is likely to arise; or

.....

(e) such an order is expedient for the ends of justice ...,

it may order that –

.....

(ii) any particular criminal case shall be transferred to and tried before the High Court."

The facts and the course of the prosecutions, trials and convictions of the appellants before and by the District Court and by the learned Chief Justice in exercise of his appellate criminal jurisdiction and the order of a re-trial had been stated in considerable detail by a differently constituted Court of Criminal Appeal in Criminal Appeal No. 9 of 1985 which concerned another aspect of the proceedings brought by the appellants. Ordinarily we would have merely incorporated them by reference. However, in all the circumstances of this case, we have decided to set out the facts again.

The background was this. For some years before June 1, 1982 the Workers' Party, a political party of which the appellants were respectively the Chairman and the Secretary-General, had failed to pay the legal costs due to a judgment creditor. The judgment creditor on June 1, 1982 obtained, as was his right, an order from the High Court under which a receiver was appointed to marshall in the assets of the Workers' Party in aid of execution of the judgment debt. About six months before the appointment of the receiver three cheques for the sums of $2,000, $200 and $400 were drawn with the Workers' Party as the payee. Although the property of the Workers' Party, these cheques or the proceeds thereof were not cleared through the bank account of the Workers' Party. They were either endorsed over or altered in one case by the drawer in circumstances in which the Workers' Party did not receive any consideration for the proceeds nor were the transactions reflected in the accounts of the Workers' Party.

In the course of the receivership, the receiver submitted his accounts to the High Court for the purpose of passing them. There was annexed to the affidavit of the receiver a declaration jointly made by both the appellants as permitted by Order 41 rule 5(2) of the Rules of Supreme Court, 1970. But the declaration was not made in the form prescribed in the Schedule to the English Statutory Declarations Act, 1835 which by section 2 of the Singapore Statutory Declarations Act was deemed to be in force in Singapore. The appellants' joint declaration stated that the receipts and payment account and the income and expenditure account both for the periods between January 1, 1982 and June 16, 1982 and the balance sheet as at June 16, 1982 of the Workers' Party, which were drawn up by its Treasurer and exhibited in the High Court, reflected "a true and fair view of the transactions and results for the period specified therein and of the state of affairs of the Workers' Party as at the date specified."

The $2,000 cheque, as endorsed, was delivered by the first appellant to a firm of solicitors in February 1982 and its proceeds were utilised to pay a judgment debt, not of the Workers' Party, but of one Madam Chiew who was the mother of the second Appellant's election agent in the December 1980 General Elections. The $200 cheque, as endorsed, was paid by the first appellant into his personal account with the Bank of America. The $400 cheque, as altered by the drawer, was encashed by an unknown person. The fact of the receipts of these cheques did not appear in any of the accounting records of the Workers' Party nor were they referred to in the aforesaid accounts prepared by the Treasurer of the Workers' Party.

In these circumstances the appellants were arraigned before the District Court in a joint trial to answer five charges. In two charges, they were separately charged for having knowingly made a false statement in the declaration which was by law receivable as evidence and punishable under section 199 read with section 193 of the Penal Code. In the other three charges, at the heart of which were the proceeds of the three cheques, the appellants were jointly charged that in furtherance of a common intention of them both they had fraudulently

delivered without adequate consideration to third parties the property of the Workers' Party in the three cheques knowing it to be likely that they would thereby prevent the distribution of the property amongst the creditors of the Workers' Party, which were offences punishable under section 421 read with section 34 of the Penal Code. After the joint trial, the learned Senior District Judge acquitted and discharged both the appellants on the false declaration charges and the two charges relating to the $2,000 cheque and the $200 cheque. But the learned Senior District Judge convicted the appellants on the charge relating to the $400 cheque and sentenced each to pay a fine of $1,000.

The Public Prosecutor appealed to the High Court against the acquittals and sentences. On the other hand, both the appellants appealed to the High Court against their convictions. All the appeals were heard by the learned Chief Justice who (a) orderd a new trial before another District Judge in respect of the charges relating to the false declaration; (b) found the appellants guilty in respect of the charges relating to the $2,000 and $200 cheques and sentenced each of them to pay a fine of $1,000 in respect of each charge and, in default, to serve imprisonment for a period of three weeks; and (c) dismissed the appeal of the Public Prosecutor against the inadequacy of the fines imposed. The learned Chief Justice set out his reasons in a long and closely reasoned judgment.

In ordering a new trial in respect of the false declaration charge, the learned Chief Justice agreed with the learned Senior District Judge that it was not a statutory declaration as the prescribed words were not used, having been inadvertently omitted. However, the learned Chief Justice overruled the learned Senior District Judge and held that in law the declaration of the appellants was nonetheless a declaration within the meaning of section 199 of the Penal Code.

We now turn to the three grounds canvassed by the appellants in support of their application to have their trials transferred to the High Court. They were respectively based on paragraphs (a), (b) and (e) of sub-section 184(1) of the Criminal Procedure Code which we have set out earlier. They were rejected by the learned High Court Judge. In the appeal before us the same three grounds were again put forward. We now consider them.

First, it was argued that the ruling in law of the learned Chief Justice that the appellants' declaration was a declaration within the meaning of section 199 of the Penal Code was binding on the new District Judge hearing the case and that it was unfair to the appellants that they could not again argue this point in a new trial, which they could if they were tried in the High Court before a High Court Judge other than the learned Chief Justice. In our view, this ground has two basic flaws. It fails to recognise that in all cases where the High Court has ordered a new trial because of an error of law such a ruling of the High Court must necessarily bind the subordinate court. If not, and if it is allowed to be re-argued, the error of law could conceivably be repeated. Secondly, it does not take into any account the fact that, subsequently, in an appeal from the subordinate court which will be heard by a High Court Judge other than the learned Chief Justice the said ruling could be argued against successfully, if there be merits, before the other High Court Judge who, if persuaded, will not be bound according to our well-known doctrine of precedents. Accordingly, we are of the view that it has not been made to appear to us that a fair and impartial trial could not be had in the District court.

Secondly, it was alleged that the trial would have involved questions of law of unusual difficulty. This ground, as we had earlier observed, was based on paragraph (b) of sub-section 184(1) of the Criminal Procedure Code. After the Criminal Procedure Code was first enacted many judicial officers holding office in the subordinate courts were persons without legal qualifications, though they were persons of standing in the public services. In Singapore, however, for more than 25 years every judicial officer holding office in the subordinate courts has been a 'qualified person' under the Legal Profession Act. Therefore, paragraph (b) has lost much of its practical importance. Judicial officers of courts subordinate to the High Court have gained vast experience in respect of cases similar to, if not more complicated than, those with which the appellants had been concerned. District Judges are qualified persons of several years' standing. Like the learned High Court Judge we too cannot see any question of law of unusual difficulty arising in this case.

Lastly, it was contended by the appellants that in the administration of criminal justice where political personalities are accused persons their trials should take place in the High Court so that appeals therefrom could be taken further. If this argument is accepted, it would be a departure from

what has been the general practice in the administration of criminal justice in Singapore since the war. In *Attorney-General* v. *Koh Cho Puan & Ors.*[1] the Attorney-General applied to try, in the High Court, a cheating case in which a bank was defrauded. It had involved complex questions of facts and law relating to shipping and banking. Voluminous documents needed analysis. Yet the late Mr. Justice Winslow in an unreported judgment refused the application of the Attorney-General. It is worth recalling what the learned Judge had said: "The power to order a transfer of a case to the High Court direct ... has very rarely been exercised and, in the only case in the post-war era in which it has been exercised, both the prosecution and the defence were agreed that the High Court should try it..." Those words fell from his Lordship's lips on July 11, 1966, which we respectfully record for posterity in view of the great learning of the late Mr. Justice Winslow who was intimately concerned with the administration of criminal justice in our land.

"[T]he only case" referred to by the late Winslow J. was *Fung Yin Ching & Ors.* v. *Public Prosecutor*[2] on which the present appellants sought to rely. In our judgment, the appellants can draw no support from that case at all, not only for the distinction which was highlighted by the late Winslow J., but because of other good reasons as well. It is beyond question that all accused persons must be treated equally regardless of status. We cannot accept the proposition that accused persons who are political personalities should be treated differently if they apply to transfer their trials to the High Court. Like every other accused person they have to satisfy the High Court and bring themselves within sub-section 184(1) of the Criminal Procedure Code. In this case, the appellants had failed to persuade the High Court to exercise its discretion. In point of fact, and we need to draw attention to it, the appellants had on November 17, 1983 unsuccessfully attempted to obtain an order to transfer the trials of the five charges to the High Court. Substantially the same grounds were relied upon. No appeal was brought in that case. Their present application to the High Court giving rise to this appeal was the second attempt to go over substantially the same grounds and was plainly an abuse of the processes of our courts.

We would accordingly dismiss the appeal.

Appeal dismissed.

Solicitors: *J. B. Jeyaretnam & Co.*

A *Appendix*

ATTORNEY-GENERAL v. KOH CHO PUAN & ORS.

[O.Cr.J. (Winslow J.) July 11, 1966]

B **[Singapore – Criminal Motion No. 10 of 1966]**

Criminal Law and Procedure – Transfer of case – Application for – Grounds for – Criminal Procedure Code (Cap. 132 Revised Laws 1955), ss. 176 & 177.

C In this case the Attorney-General applied for the transfer for trial to High Court on the ground that the law was complex, the trial likely to be lengthy, and the documentary exhibits voluminous.

Held: the power to order a transfer of case to the High Court direct without a preliminary enquiry has very rarely been exercised and in the only case in the post-war era in which it has been so exercised, both the prosecution and the defence were agreed that the High Court should try it – although there was disagreement between them about the right to a preliminary inquiry which the Court decided did not exist in the case of trial without jury. That case moreover proceeded on the common ground that a fair and impartial trial could not be had before the District Courts. This case did not.

E The provisions of sections 176 and 177 of the Criminal Procedure Code discussed.

CRIMINAL MOTION.

Winslow J. : The Attorney-General applies for F the transfer for trial to this Court of this case in which it is claimed the law is complex, the trial likely to be lengthy, and the documentary exhibits voluminous.

The application is strongly opposed by counsel G representing all the 4 accused persons concerned who claim that the case is within the competence of the District Courts and that it would be against the financial interests of the accused persons to have it so transferred. It is also stressed that all the charges involve the same transaction and that the H law is not complicated.

I am inclined to agree that, on the facts before me, this is the kind of case where the supreme needs of justice do not require that the ordinary course of justice should be altered. Its length alone I is not necessarily a decisive factor for a transfer to this Court and the mere fact that the case involves some knowledge of shipping and banking practice does not in my opinion render it beyond the competence of the Courts already entrusted by the legislature with the task of hearing trials of accused persons charged with cheating and allied offences.